

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**GOVERNOR GREG ABBOTT, in his official
capacity as Governor of the State of
Texas,**

and

**GOVERNOR MIKE DUNLEAVY, in his
official capacity as Governor of the State of
Alaska,**

Plaintiffs,

v.

**JOSEPH R. BIDEN, in his official capacity
as President of the United States, *et al.*,
*Defendants.***

No. 6:22-cv-3-JCB

**PLAINTIFFS' RESPONSE TO DEFENDANTS PROPOSED SCHEDULE
AND MOTION FOR STAY**

The Fifth Circuit's opinion on the preliminary-injunction appeal is likely to furnish guidance that will help both the parties and the Court with their analysis of the law and how it applies to these facts. A stay will likely result in a more efficient resolution of the case and will do so without unnecessarily delay. Texas and Alaska therefore respectfully request that the Court stay proceedings until 30 days after the Fifth Circuit's resolution of the preliminary-injunction appeal.

Should trial-court proceedings continue, the parties are likely to brief, and the Court consider, issues on currently open questions that the Fifth Circuit's opinion may close. More, should trial court proceedings continue, the parties will be duplicating their efforts by briefing issues before two courts, and this Court and the Fifth Circuit will be duplicating

their efforts by considering the same issues simultaneously. This is especially the case under the Defendants' proposed schedule, under which briefing would close on October 14, only two days after the Fifth Circuit's close-of-briefing date of October 12.

Both sides have agreed not to seek extensions of their briefing deadlines before the Fifth Circuit, and Texas has filed an unopposed motion to set argument on the first date available after the close of briefing. *See* Exh. A. The appeal is therefore likely to be submitted to the Fifth Circuit no later than early November with an opinion possible before the end of the year, making it possible that any final judgment from the Court will only weeks later be contradicted by a conflicting ruling from the Fifth Circuit in the very same case. A stay avoids this result and has the added benefit of avoiding multiple rounds of briefing. A decision from the Fifth Circuit during a stay by this Court will not only furnish important legal guidance to the parties, it will furnish strategic guidance about how (and even whether) the parties should proceed, will almost certainly avoid the need for the post-judgment briefing that may be necessary if a Fifth Circuit opinion quickly supervenes a trial-court judgment, and may render a second appeal unnecessary. A stay, that is, could prevent up to three rounds of briefing—and the related time and effort required for a court to consider the issues raised therein.

The savings of a stay to both the Court and the parties are likely to be significant. The benefits of proceeding before this Court while an appeal simultaneously proceeds before the Fifth Circuit do not outweigh them. Texas and Alaska therefore respectfully request that the Court stay these proceedings until 30 days after the Fifth Circuit's resolution of the preliminary-injunction appeal. To the extent the Court chooses not to stay this case, the Plaintiffs are unopposed to the Defendants' proposed schedule.

Date: July 20, 2022.

Respectfully submitted.

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Certificate of Service

I certify that on July 20, 2022, this document was filed through the Court's CM/ECF system, which automatically serves all counsel of record.

/s/ Leif A. Olson

Certificate of Conference

I certify that on July 15, 2022, Defendants' counsel, Zachary A. Avallone and James Gillingham, informed me that they oppose a stay in favor of the Defendants' proposed schedule.

/s/ Leif A. Olson